

Generally, sales of "do-it-yourself" trailer kits are subject to Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.101. (This is a GIL.)

July 28, 2008

Dear Xxxxx:

This letter is in response to your letter that was received in this office on September 27, 2007, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

My boss was searching thru the Illinois Department of Revenue website and came across some information which raised two questions about what we have been doing with sales tax for several years. We need to have something clarified and ruled on by the legal department. I had talked to someone over the phone and they did not want to say exactly what to do and gave me this address to send our inquiry.

ISSUE NO. 1

ABC manufactures and sells barbeque grills. Some grills come with casters (see catalog page enclosed) and the same grill body is sold with a trailer kit. We do issue "certificates of origin" to the customer to take to the Department of Motor Vehicles to get a license plate for the trailer. A vin number is issued and a vin plate is attached to the trailer frame. This trailer becomes part of the entire grill under a single part number which includes the grill, the trailer, an adapter to connect to a vehicle, and the hood that goes over the grill. In CITY the tax tables on your web site indicated that general merchandise is taxed at 7% (which is what we have been using for all sales in Illinois). The tax table indicated that a vehicle is taxed at only 6.5%. Which part of the sale would be considered a vehicle? I don't think of this product as a vehicle and we have always taxed this item at 7%. I don't see a problem doing that. If you rule that we must tax at only 6.5%, then the grill portion of the item we are selling would be at a lower rate than a grill on casters which doesn't seem logical. To split out the trailer only (it does come in

a box and is assembled by the end customer) would be difficult to do on every invoice we issue with this part number (for example; Mobile-II) because that part number consist [sic] of 5 separate components which we sell separately but bundle as a Mobile-II for marketing purposes.

In conclusion, I would like to continue taxing all products sold by ABC at the 7% rate and not have to break out the trailer from an invoice and tax the trailer at one rate and the other items on that same invoice at a different rate.

ISSUE NO.2

The answer to the above issue should make the answer to this second issue straight forward and logical.

My boss came across the enclosed vehicle tax rate chart. As you could imagine if the above issue is decided that our product is a vehicle per whatever definition you wish to apply then we would have an issue when we sell a grill on a trailer to a customer to the few states on this list.

I went to the website of Arizona Department of Revenue and verified that the sales tax rate in their state was 5.6%. I also called the department directly to discuss this issue. I explained who ABC was (no office or warehouse in Arizona; no salespeople travel in or thru Arizona; only sell via the web and a catalog). The department of revenue for Arizona agreed that we did not have a presence in Arizona and thus not liable to collect any tax for Arizona. Then we discussed the fact that a grill we sold came on a trailer. I told them we issue a certificate of origin. I then asked that if a customer goes to their vehicle registration office, would the sales tax (under Arizona use tax rules) be imposed at that time. They indicated that the tax would be collected at that time and that the customer was responsible for the tax under use tax rules.

I do not understand the non-reciprocal vehicle tax rate table because Arizona did not seem to indicate to me any issues with the state of Illinois and would invoke their use tax rules.

In conclusion, our company would like to not have to worry about these tax rates in different states (we do not have a presence in any other state other than Illinois) in relationship to our grill on a trailer sales to customers in other states. Most states have use tax rules and that is what we have assumed has happened over the past several years.

In conclusion, I guess the question is does ABC sell a vehicle? In my opinion even though we issue vin numbers, we are not a seller of trailers. We sell grills and would like to continue to tax all our grills at one rate. I look forward to your reply to this inquiry as soon as possible. We want to do the right thing and will abide by your ruling.

Thank you for your cooperation with this letter.

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill.

Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchase occurs in Illinois, the purchaser must pay the Use Tax to the retailer at the time of purchase. The retailer is then allowed to retain the amount of Use Tax paid to reimburse himself for their Retailers' Occupation Tax liability incurred on the sale. If the purchase occurs outside Illinois and the seller is not registered to collect Illinois Use Tax, purchaser must self assess his Use Tax liability and remit the tax directly to the Department.

Your letter states that the grill, grill hood, adaptor and trailer parts come in a box and are assembled by the end user. Generally, sales of "do-it-yourself" trailer kits in this State are subject to Retailers' Occupation Tax liability at the general merchandise tax rate and are not considered the sale of an item that is subject to the vehicle tax rate. Kits of this type are subject to tax at the time of purchase and should be reported on the retailer's Form ST-1, Sales and Use Tax return.

After the customer purchases the trailer kit and assembles the trailer, the customer is responsible for establishing with the Illinois Secretary of State's Office that the tax was paid on the parts to assemble the trailer before that Office will license the trailer.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Richard S. Wolters
Associate Counsel

RSW:msk